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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket 98-147
Advanced Telecommunications Capability	)	

Reply Comments of Level 3 Communications, Inc.

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Level 3 Communications, Inc. ("Level 3"), through undersigned counsel, respectfully submits the following reply comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[1]

I. Introduction and Summary.

In its initial comments, Level 3 urged the Federal Communications Commission ("Commission") to require incumbent local exchange carries ("ILECs") to completely divest their advanced services affiliates and advanced services equipment or, in the absence of complete divestiture, to apply Section 251(c) obligations to the ILECs' provision of advanced telecommunications services. Level 3 argued that without complete divestiture of ILECs' monopoly bottleneck facilities, ILECs will continue to favor their advanced services affiliate over competitors. In time, this favoritism will inhibit the introduction of full-fledged competition in the local exchange and advanced services markets.

The initial comments filed by ILECs in this proceeding provide resounding proof that Level 3's concerns are well-founded. In objecting to even the minimal separation requirements proposed by the Commission, the ILECs admit exactly what competitive local exchange carriers ("CLECs") have long argued – a competitive provider must use the ILECs' bottleneck ubiquitous network if they are to reach subscribers and compete in the local market. If ILECs truly cannot provide advanced services through affiliates unless the

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[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 98-188 (rel. Aug. 7, 1998) ("NPRM").

affiliate may: jointly own switching and transmission facilities with the ILEC;[2] share operations, installation and maintenance personnel with the ILEC;[3] jointly market services with the ILEC;[4] share the ILEC's customer proprietary network information;[5] use the ILEC's trade name and logo;[6] engage in joint product planning and development with the ILEC;[7] and have access to the same parent corporation's capital,[8] then CLECs, ***who enter the market with none of these advantages***, will surely never succeed in gaining any share of the advanced services market. In short, the ILECs do protest too much. Yet their protests confirm what CLECs have argued all along – the transition from monopoly to competitive markets will never occur on a level playing field because ILECs will never voluntarily abandon their self-interests.

In these reply comments, Level 3 rebuts arguments that the Commission should permit ILECs to provide advanced services free of Section 251(c) obligations through an affiliate subject only to minimal, non-structural separation rules. Level 3 urges the

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2 *See, e.g.*, SBC at 10.

3 *See, e.g.*, Ameritech at 56, Bell Atlantic at 30, GTE at 35,40.

4 *See, e.g.*, Ameritech at 54-55.

5 *See, e.g.*, Bell Atlantic at 30-31, GTE at 28, SBC at 6, 9.

6 *See, e.g.*, Bell Atlantic at 31, GTE at 45-46.

7 *See, e.g.*, Bell Atlantic at 29.

8 *See, e.g.*, Bell Atlantic at 32, GTE at 44.

Commission to recognize that what might be considered advanced telecommunications today will be commonplace tomorrow, possibly sooner than is generally recognized. By permitting ILECs to provide advanced services through closely related affiliates subject to only minimal, non-structural separation requirements, the Commission will essentially permit ILECs to leverage their continuing monopoly control over the public switched telecommunications network ("PSTN") into a minimally regulated monopoly of advanced services that, over time, supercede and supplant the PSTN.

Level 3's initial comments recommended that the Commission take certain steps to strengthen its current loop unbundling and collocation rules to ensure that competitive providers have economically efficient and non-discriminatory access to ILECs' bottleneck monopoly facilities. In these reply comments, Level 3 rebuts the outlandish objections ILECs raise to strengthened national collocation rules and urges the Commission to recognize that not all advanced services are telecommunications services. Finally, Level 3 notes that some of the ILECs continue to make arguments and propose regulatory forbearance measures recently rejected by the Commission in its Advanced Services Order.[9] Because this NPRM is not the proper place to rehash those arguments or request reconsideration of the Commission's ruling, the ILECs' repetitive arguments and proposals should be summarily rejected.

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[9] *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, Memorandum Opinion and Order, FCC 98-188 (rel. Aug. 7, 1998) ("Advanced Services Order").

II. Non-Structural Separation Would Permit ILECs to Leverage Their PSTN Monopoly Into An Unregulated Monopoly Over Tomorrow's Basic Communications Services

Level 3 firmly believes that Internet Protocol ("IP") will ultimately become the dominant technology for both voice and data applications because its advantages will make it superior in the long run to the outmoded circuit-switched PSTN, even as updated by embedded ATM and frame relay technologies.[10] The traditional circuit switched network architecture, if it survives at all, will fulfill only a narrow niche for specialized applications while the great mass of communications – even voice telephony – will be carried on IP-based computer networks. In other words, what is considered to be advanced telecommunications today will become commonplace tomorrow. And tomorrow is close at hand.

ILECs continue to insist that because the advanced telecommunications market is competitive, there is no need to impose regulatory constraints on their provision of such services.[11] Level 3 would agree, *if* the ILECs did not have a stranglehold on the critical local loop/central office features that are crucial even to networks as advanced as that of

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[10] *See* Level 3 Reply Comments, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, CC Docket No. 98-146 (filed Oct. 8, 1998).

[11] BellSouth goes so far as to argue that the goal of competition "has been achieved for high-volume business users, who can select among several competing providers to fulfill their broadband telecommunications requirements." BellSouth at 1. To the contrary, the Ad Hoc Telecommunications Users Committee, a coalition of high-volume business users, states that in the vast majority of markets, the ILEC is still the ***only*** potential supplier of advanced telecommunications Services. Ad Hoc at 8.

Level 3. Despite ILEC protestations to the contrary, currently available methods of bypassing the local loop (such as cable distribution facilities and wireless and satellite technologies) are not widely available. Cable system access may serve a small fraction of the market, but today's state-of-the-art cable systems still suffer from severe capacity and reliability problems and from geographic limitations arising from the general absence of cable facilities in commercial or industrial areas. Spectrum, security and reliability limitations of wireless technology also prohibit such systems from meeting more than a small fraction of the need. In short, there is no way around the *immediate* need for cost-based, unbundled and equitable access to the ILECs' local loop plant.

As the Commission has recognized, "[c]ompetition in the local exchange and exchange access markets is the best safeguard against anticompetitive behavior."[12] Despite over two years of operating under the competitive framework established by the Telecommunications Act of 1996 ("1996 Act"), not a single Bell Operating Company ("BOC") has shown that it complies with the 14-point competitive checklist.[13] This checklist

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[12] *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Docket No. 98-10, Further Notice of Proposed Rulemaking, FCC 98-8, ¶49 (rel. Jan. 30, 1998) ("*Computer III FNPRM*").

[13] Even after the BOCs pass the competitive checklist, they are not free to provide interLATA services that originate on their bottleneck local networks on an integrated basis. Rather, BOCs that pass the Section 271 test must comply with the separation requirements of Section 272. Advanced services, like interLATA services, rely on the BOCs' local bottleneck networks to originate and terminate communications, both voice and data. There is no reason to afford providers of advanced services less

set forth by Congress is the key measurement of whether or not BOCs have opened their local exchange markets to competition. Clearly, "BOCs remain the dominant providers of local exchange and access services in their in-region states, and thus continue to have the ability and incentive to engage in anticompetitive behavior."[14]

Level 3 firmly believes in the deregulatory goals of the 1996 Act. Where advanced telecommunications and information services are deployed by non-dominant providers, neither the Commission nor state commissions should assert regulatory control over such services. Rather, competitive market forces, together with traditional antitrust and consumer protection laws, will ensure that services are deployed to meet consumers' demand. However, dominant firms that control local bottleneck facilities have both the ability and incentive to restrict others' access to such facilities and, ultimately, to consumers served by those facilities. Under these circumstances, regulatory efforts should be focused on access to the bottleneck facilities, rather than the downstream markets in which users of those facilities compete. In this sense, the Commission is moving in the right direction, although as discussed below, its proposals fall short of the goal.

While permitting ILECs to provide advanced services through a loosely separated affiliate could have grave consequences for ILECs' ability and incentives to discriminate

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protection from anticompetitive monopolistic behavior than providers of traditional long distance services, especially where the BOC has yet to meet the 14-point competitive checklist.

[14] *Computer III FNPRM* at ¶51.

against competing carriers, the Commission's proposal poses an even larger risk. As Sprint recognized, "ILEC affiliates offering what may seem like 'advanced' services today are in reality supplanting the operations and traditional functions of the ILECs." The Yankee Group has estimated that within seven years, 15% of consumer long distance traffic in the U.S. will be IP telephony minutes and by 2003, 25% of international call minutes worldwide will be made over the Internet.[15] A recent survey of Fortune 1000 companies by Killen & Associates shows that survey respondents expect 33% of their voice traffic will be carried over IP by the year 2005.[16] Given the explosive growth rate of the Internet, even these estimates could be conservative for both Internet telephony and IP telephony.[17]

As both consumers and businesses demand faster, lower priced, higher bandwidth services, the ILECs will have every incentive to switch their current customers off the circuit-switched PSTN and onto their affiliate's packet-switched network. Relaxed

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15 *Internet Telephony Growing Up*, Economist at 56-58 (May 2, 1998).

16 *33% of Voice Traffic to Go IP – Fortune 100 Telecom/Datacom Managers Predict*, Killen & Assoc. Press Releases (Aug. 25, 1998) (available at http://www.killen.com/press/pr980825.html).

17 Although often confused and/or used interchangeably, Internet telephony and IP telephony are two different things altogether. The former is the presently available, somewhat rickety blend of traditional circuit switched and packet switched services; it is Internet based, and while growing rapidly, is most suitable for casual or everyday applications. The latter is transmitted based on a packet switching protocol and may be offered over facilities completely unrelated to the Internet. Level 3 provides IP telephony.

regulatory treatment of the affiliate will provide further incentives to direct to the affiliate not only customers, but also all advanced services, all equipment used to provide advanced services, and investment dollars. The relaxed regulatory treatment and non-structural separation proposed by the Commission therefore poses a very real danger of disinvestment in the PSTN while the ILECs leverage their regulated monopoly over the PSTN to an unregulated monopoly over the high-bandwidth, "advanced" services that most consumers will soon rely on for everyday voice traffic.

The Indiana Utility Regulatory Commission and Staff of the Wisconsin Public Service Commission ("IURC/WPSC") raised precisely this issue in their comments, providing an example of the problems posed by the Commission's affiliate proposal.

> If packet-switching elements are under the control of the advanced services affiliate, not the local exchange carrier, the basic signaling functions of the public switched network will be controlled by a non-regulated affiliate. The affiliate can charge any price for Signaling System 7 because under the FCC's proposed regulatory regime, the affiliate is not subject to section 251(c) of the Act and, hence, is not subject to section 252(d). As a result, the FCC and the states would lose much of their ability to regulate prices.[18]

Taken together, the dangers posed by the Commission's separate affiliate proposal and the ILECs' statements that the proposal will not provide them any greater incentive to invest in advanced services[19] can lead the Commission to only one conclusion. The separate affiliate rules, as proposed in the NPRM, do not meet the goals of Section 706

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[18] IURC/WPSC at 11.

[19] *See, e.g.*, U S WEST at 15-17 (proposal is a cure that is worse than the disease).

and instead undermine the goals of the 1996 Act to promote competition. The Commission must not permit the ILECs' monopoly over local exchange services to mutate into an unregulated monopoly over advanced services. The Commission should abandon its separate affiliate proposal and defer decisions relaxing regulation until it has completed its Notice of Inquiry.

III. The Commission Should Strengthen Its National Collocation Rules

A. Strengthened National Rules Are Necessary

In its comments, Level 3 urged the Commission to adopt stronger loop unbundling and collocation rules. Contrary to ILEC arguments, additional national rules are necessary. As noted above, after over two years of experience under the pro-competitive framework of the 1996 Act, no BOC has yet proven that it has opened its local market to competition. Instead, the BOCs and GTE have gone to great lengths to challenge the Commission's local competition rules and state commissions' interconnection arbitration orders. These challenges have delayed for too long the introduction of competition in local telecommunications markets.

As Level 3 plans the construction schedules for its nationwide network, one of its constant and most time consuming problems is securing collocation from ILECs. As the affidavit attached to Level 3's initial comments showed, Level 3 typically encounters a number of unnecessary delaying tactics. In Level 3's experience, the great majority of ILEC collocation managers do not approach collocation issues with the mindset that Level

3 is a customer purchasing services from the ILEC. Instead, Level 3 typically experiences ILEC collocation managers who proceed slowly and show little willingness to be flexible or engage in problem solving. The ILEC-advocated approach to collocation – negotiations first, with case-by-case state commission complaints[20] – would only preserve this go-slow status quo. The ILECs would like nothing better than to force Level 3, and other competitors, to litigate the same issues over and over, in state after state. Because no BOC has yet shown that it has opened its market to competition, it is clearly time for the Commission to change the status quo and adopt additional collocation rules.

Washington state presents a prime example of why the go-slow, negotiate first, case-by-case complaint process is unacceptable and fails to meet the standards or intent of the 1996 Act.[21] In a case that began on January 22, 1997, the Washington Utilities and Transportation Commission ("WUTC") considered for the first time denials by an ILEC (U S WEST) of various requests by CLECs (MFS, TCG, and ELI) for physical collocation of

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[20] *See, e.g.*, Ameritech at 32-37, Bell Atlantic at 32, 41-43, BellSouth at 44, GTE at 60, SBC at 20, and U S WEST at 36, 42. All generally argue that the state commissions, with their greater knowledge of local conditions and their ability to arbitrate on a case-by-case basis, should be responsible for implementing collocation rules and resolving collocation disputes.

[21] *See also Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops*, Docket Nos. 16189 et al, Arbitration Award, 9 (Tex. P.U.C. Nov. 7, 1996) (finding that "SWBT must tariff the rates, terms, and conditions for physical collocation, rather than requiring negotiation of each collocation arrangement on an individual case basis").

equipment in the central offices of the ILEC.[22] U S WEST originally claimed three central offices were exempt from physical collocation because of space limitations. U S WEST later added two more central offices to its exemption claim. Disputes over space limitations for two of the five offices were resolved prior to the WUTC's initial December 23, 1997 Order in the case.[23] The initial order required U S WEST to complete inventories of inactive and underutilized equipment and an assessment of vacant space for the remaining three central offices. On September 11, 1998, the WUTC issued an order approving a stipulation between the parties regarding one of the remaining central offices and ordered U S WEST to make an initial assessment of whether vacant space is available in the other two central offices.[24] In short, under the negotiate-first/case-by-case-litigation approach, CLECs have yet to resolve this particular collocation dispute after 20 months, and U S WEST has yet to meet its burden of showing that space limitations exempt it from the duty to provide collocation in two central offices.

On a more positive note, the WUTC has learned from this experience and established guidelines for future exemption requests, imposed reporting and survey obligations on U S WEST, and set timetables for U S WEST to review and respond to

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22 *Initial Order on U S West Request for Exception from Duty to Provide Physical Collocation*, Docket Nos. UT-960323, 960326 and 960337 (W.U.T.C. Dec. 23, 1997).

23 *Id.* at 2.

24 *Commission Decision and Final Order Modifying Initial Order, In Part, and Affirming, in Part*, Docket Nos. UT-960323, 960326 and 960337 (W.U.T.C. Sept. 11, 1998).

collocation requests.[25] None of the pro-competitive measures adopted by the WUTC rely on state-specific, region-specific, or ILEC-specific criteria. Similarly, all of the new national rules Level 3 proposed for Commission adoption are national in scope and generic enough to be applied to any ILEC.

Many of the collocation rules Level 3 proposed have already been implemented by at least one ILEC or state commission. Level 3 asked the Commission to require ILECs to permit collocation pursuant to tariff or contract with no certification or interconnection prerequisites. As Ameritech's comments show, it permits customers to collocate pursuant to tariffed terms and conditions prior to CLEC certification and prior to the execution of an interconnection agreement.[26] Level 3 asked the Commission to require ILECs to publicize and regularly update space exhaustion information. GTE posts tariffs on its website which shows sites for which collocation space is not available.[27] Level 3 asked the Commission to establish application and provisioning intervals. The WUTC recently established application and quote preparation intervals and Bell Atlantic-New York has committed to

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25 *See, Id.* at 32-35.

26 Ameritech at 45. Nextlink also advocates requiring ILECs to tariff terms and conditions for collocation. Nextlink at 13.

27 GTE at 74.

meeting measured intervals for the provision of collocation in its Section 271 pre-filing statement.[28]

B. Collocation of Equipment that Is Used Or Useful for Interconnection Is Not A Taking

Once again, the ILECs are unnecessarily raising the great "takings" alarm. They argue that the Congressionally-mandated obligation to provide collocation must be construed narrowly to prohibit collocation of any equipment that is not strictly "necessary" for interconnection.[29] Section 251(c)(6) requires ILECs to permit collocation of equipment that is necessary for interconnection or access to unbundled network elements. 47 U.S.C. § 251(c)(6). Under 47 C.F.R. § 51.323(b), ILECs must permit the collocation of any type of equipment ***used*** for interconnection or access to unbundled network elements. Furthermore, the duty to show that a particular piece of equipment will not be used for interconnection or access falls on the ILEC.

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[28] *Petition of New York Telephone Company for Approval of Its Statement of Generally Available Terms and Conditions pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry pursuant to Section 271 of the Telecommunications Act of 1996*, Case No. 97-C-0271, Pre-filing Statement of Bell Atlantic - New York, 24 (filed April 6, 1998). *See also Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market*, PUC Project No. 16251, Commission Recommendation, 9 (Tex. P.U.C. June 3, 1998) (finding that Southwestern Bell should establish measures for the number of days to complete physical collocation facilities).

[29] *See, e.g.*, U S WEST at 37-38 (necessary means required, essential, or indispensable; "wanting collocation space and *needing* it for interconnection are clearly distinct, and the Act imposes a duty on U S WEST only when the latter threshold is met").

The Commission's current collocation rules have not been vacated and are therefore binding on the ILECs.[30] Although the Eighth Circuit did not specifically review the Commission's collocation rules,[31] it did review the Commission's interpretation of the word "necessary" in the context of what elements must be unbundled. In upholding the Commission's definition of "necessary," the Eighth Circuit did not simply defer to the Commission's interpretation. Rather, it noted that ***courts*** have at times interpreted "necessary" to mean "convenient, or useful."[32] An overly strict reading of the word "necessary" as it relates to collocation would unduly restrict the collocation duties of ILECs and hinder the development of competition in contravention of the Act, just as it would unduly restrict the unbundling duties of ILECs in contravention of the Act. *See, Iowa Utils. Bd.*, 120 F.3d at 811. In addition, attributing an overly strict meaning to the word "necessary" as used in one Section 251(c) duty and not others would violate principles of statutory construction. Congress is generally understood to have intended identical words to have identical meanings.[33] Thus any equipment that is used for interconnection or

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30 *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 819 (8th Cir. 1997) *cert. granted, AT&T Corp. v. Iowa Utils. Bd.*, 118 S. Ct. 879 (1998) (limiting rejection of Commission rules to those that were specifically overturned).

31 ILECs did request the Eighth Circuit to vacate the entire *Local Competition Order* and the court refused to do so.

32 *Iowa Utils. Bd.*, 120 F.3d at 812.

33 *Sutherland Stat Const* § 46.06 & n. 6 (5th Ed).

access to unbundled network elements clearly qualifies as eligible for collocation by a requesting telecommunications carrier.

Level 3 wishes to reiterate its concern that ILECs will try to use current Commission rules to deny collocation of packet switches and routers. Nothing in the plain language of Section 251(c)(6) prohibits collocation of transport equipment that happens to have switching capabilities built in.[34] Yet many ILECs adamantly argued that requiring collocation of switches would amount to a taking of their property.[35] As one equipment manufacturer notes, because the lines between switching and transmission equipment are blurring and will continue to do so, it would be counterproductive for the Commission to be too precise in listing specific equipment that may be collocated.[36] Requiring CLECs to disable the switching functions of equipment in order to collocate such equipment on the ILEC's premises "would preclude cost-effective deployment of advanced services and force higher costs onto carriers and ultimately onto consumers."[37]

In support of its argument that switching equipment cannot be collocated at the ILEC's premises, SBC claims that it is not uncommon for a remote switching module to

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34 *See*, Kiesling at 12.

35 *See, e.g.*, U S WEST at 37-38, SBC at 16-17.

36 Nortel at 3-4. In addition to Nortel and many CLECs, the Texas (at 8) and New York (at 11) Commissions and the General Services Administration (at 12-13) all supported a rule that would permit CLECs to collocate equipment that handles both transmission and switching functions.

37 Nortel at 4.

take up 2,400 to 3,000 square feet in a metropolitan central office. While this may be true for circuit switching equipment, space constraints are clearly not an issue that could prevent collocation of packet switching equipment. Packet switches are rack mountable and fit in standard data racks. Packet switches are generally not proprietary and can be placed anywhere within a CLEC's collocation space. Packet switches are more scalable than circuit switches and require less power and less environmental conditioning. Packet switches can be and are used for interconnection and access to unbundled network elements (*e.g.*, to provide xDSL over an unbundled loop). The Commission should use this opportunity to clarify that ILECs must permit CLECs to collocate packet switching equipment.[38]

IV. The Commission Must Recognize That Not All Advanced Services Are Telecommunications Services

Level 3 has found common ground with an ILEC on at least one issue. GTE faults the Commission for making what could be interpreted as a broad declaration that all services with advanced capabilities are ***telecommunications services***.[39] Section 706 of the 1996 Act defines advanced ***telecommunications*** capability "without regard to any transmission media or technology, as high-speed, switched, broadband ***telecommunications*** capability that enables users to originate and receive high-quality

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[38] Packet switching equipment includes, but is not limited to, media gateways, circuit-packet gateways, trunking gateways, access gateways, edge devices, data network edge devices, routers, ATM switches, and frame relay switches.

[39] GTE at 109, n. 239.

voice, data, graphics, and video telecommunications using any technology." (Emphasis added.) As the Commission well knows, the Act distinguishes between telecommunications services and information services[40] and the Commission traditionally exercises only ancillary jurisdiction over enhanced services (a subset of information services) under Title I of the Act. While information services may be provided ***via telecommunications***,[41] they are not telecommunications services. Furthermore, the Commission traditionally examines new services on a case-by-case basis to determine whether they meet the definition of an enhanced or information service. It would therefore be contrary to Commission policy to sweep all services with advanced capabilities into the category of telecommunications services, especially where the record lacks evidence supporting such classifications for services that have yet to be developed or deployed.

V. The Commission Should Summarily Dismiss BOC Attempts to Reverse the Findings Made In the Order Denying BOC Section 706 Petitions

Some BOCs continue to make arguments and propose regulatory forbearance measures recently rejected by the Commission in its Advanced Services Order. For example, some BOCs largely rehash arguments presented in their Section 706 petitions

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[40] 47 U.S.C. § 153(46) (defining telecommunications service) and 153(20).

[41] *See, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, FCC 98-67 (rel. April 10, 1998) ("[W]hen an entity offers transmission incorporating the 'capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,' it does not offer telecommunications. Rather, it offers an 'information service' even though it uses telecommunications to do so.")

in favor of "data" interLATA relief.[42] Notwithstanding BOC protestations about the economic efficiencies and investment incentives that would flow from eliminating LATA boundaries, the Commission has correctly determined that it has no authority to eliminate LATA boundaries for data services. BOCs hold in their own hands the ability to eliminate the interLATA restrictions mandated by the Act. To date, no BOC has shown that it has opened its local monopoly to competition and therefore the Commission has no grounds to grant interLATA relief. The Commission has already rejected these arguments and should do so again here.

In evaluating the limited interLATA relief proposed by the Commission, some BOCs argue that the proposals "will have little, if any, impact on competition or on [the ILEC's] investment incentives."[43] Others claim that the proposed relief "is so tightly circumscribed as to be useless in a commercial sense."[44] Such arguments do nothing to disturb the Commission's initial holding that it has no authority to grant the broader interLATA relief implicitly advocated by these arguments. Furthermore, they show that the Commission's proposed measures will not meet the intended goal of spurring investment in advanced services. The Commission's proposals for targeted, limited interLATA relief must therefore be abandoned.

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42 *See, e.g.*, U S WEST at 52-54.

43 BellSouth at 33.

44 Ameritech at 3.

The Commission must similarly ignore the explicit threats of BOCs to limit their deployment of advanced services absent more favorable regulatory treatment.[45] Current law does not permit the Commission to forbear from regulating ILEC provision of advanced services. If ILECs want to amend the requirements of current law, they must take their case to Congress, not the Commission.

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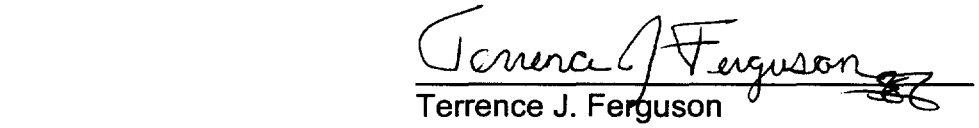
[45] *See, e.g.*, SBC at 13 (threatening that without more favorable regulatory treatment, SBC LECs may need to limit the deployment of advanced technology to metropolitan areas only).

Conclusion

For those reasons specified herein and in Level 3's initial comments, Level 3 urges the Commission to adopt stronger national rules on loop unbundling and collocation to promote competition in both the local and advanced services markets. Level 3 also recommends that the Commission abandon its separate affiliate proposal and require complete divestiture of ILECs' bottleneck network facilities before relaxing regulation of ILEC–provided advanced services. Although Level 3 supports deregulation of advanced telecommunications services for non-dominant firms, neither ILECs nor their affiliates will be non-dominant until they are required to divest their monopoly bottleneck facilities.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Terrence J. Ferguson, hereby certify that I have on this 16th day of October, 1998, served copies of the foregoing Reply Comments of Level 3 Communications, Inc. on the following via hand delivery:

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